

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6311

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

LEONEL ROMEO CAZACO, a/k/a Jimmy Fingers,
a/k/a Frank Nisbett, a/k/a James Romeo Nelson,
a/k/a Phil, a/k/a Scott,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, District Judge. (CR-96-66)

Submitted: July 20, 2005

Decided: August 4, 2005

Before WILKINSON, TRAXLER, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Leonel Romeo Cazaco, Appellant Pro Se. Stephen Wiley Miller, David John Novak, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Leonel Romeo Cazaco seeks to appeal the district court's order denying relief on his motion filed pursuant to Fed. R. Civ. P. 60(b), seeking reconsideration of the denial of his 28 U.S.C. § 2255 (2000) motion. Because Cazaco's motion did not assert a defect in the collateral review process itself, but rather reargued the merits of his § 2255 motion based on new case law, the district court concluded that it did not constitute a true Rule 60(b) motion under our decision in United States v. Winestock, 340 F.3d 200, 207 (4th Cir.), cert. denied, 540 U.S. 995 (2003). To appeal an order denying a Rule 60(b) motion in a habeas action, Cazaco must establish entitlement to a certificate of appealability. See Reid v. Angelone, 369 F.3d 363, 368 (4th Cir. 2004).

A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Cazaco has not made the requisite showing.

Accordingly, we deny a certificate of appealability and dismiss the appeal.

To the extent that Cazaco's notice of appeal and informal brief could be construed as a motion for authorization to file a successive § 2255 motion, we deny such authorization. See Winestock, 340 F.3d at 208. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED